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17 UNITED STATES BANKRUPTCY COURT

18 NORTHERN DISTRICT OF CALIFORNIA

19 SAN FRANCISCO DIVISION

20 In re Case No. 01-32495-TC
21 AT HOME CORPORATION, et al. Chapter 11
22 Debtors. (Jointly Administered)

23 STATEMENT RE SUBSTITUTION OF
ATTORNEY

24 Date: November 7, 2007
25 Time: 10:00 a.m.
26 Place: Hon. Thomas E. Carlson
27 Court Room 23
28 235 Pine Street
San Francisco, California

STATEMENT RE SUBSTITUTION OF ATTORNEY

1 **I. INTRODUCTION**

2 On October 26, 2007, Sonnenschein Nath & Rosenthal LLP filed a Consent Order for
3 Substitution of Attorney seeking court approval of Sonnenschein's withdrawal from its
4 representation of the Class 7 Committee in favor of Stephen C. Becker, Esq. of the Becker Law
5 Office. Mr. Becker filed a separate application to the Court for authorization of his employment.
6 The Bondholders' Liquidating Trust ("BHLT") filed a response to Mr. Becker's application in
7 which it states that it "objects to the Class 7 Committee switching legal counsel." The BHLT
8 suggests that approval of the substitution should be premised on a "commitment" from the Class
9 7 Committee that the substitution will "in no way delay these proceedings" and that the BHLT
10 will not have to pay for Mr. Becker to inform himself about the nature of this case or the
11 settlement. The BHLT's preemptive objection and its proposed conditions are not appropriate.
12 Accordingly, Sonnenschein requests that the Court approve the substitution without setting
13 preconditions that would limit Mr. Becker's ability to represent the Class 7 Committee
14 effectively.

15 **II. ARGUMENT**

16 **A. The Class 7 Committee Is Entitled To The Counsel Of Their Choice.**

17 Absent some extraordinary circumstance -- such as a clear conflict of interest -- the Class
18 7 Committee is entitled to select its own counsel. *See, e.g., In re Valley-Vulcan Mold Co.*, 237
19 B.R. 322, (6th Cir. BAP 1999) (stating that, in the context of a motion to disqualify, "a party's
20 choice of counsel is entitled to substantial deference."). Because the Class 7 Committee is not a
21 statutory committee, Mr. Becker was not required to submit an application for approval of his
22 employment and presumably did so as a courtesy to the BHLT. Moreover, even where the Court
23 does approve the employment of counsel, a party's choice of counsel is entitled to strong
24 deference. *See, e.g., In re Diva Jewelry Design, Inc.*, 367 B.R. 463, 477 (Bankr. S.D.N.Y. 2007)
25 ("The relationship between attorney and client is highly confidential, demanding personal faith
26 and confidence in order that they may work together harmoniously. Only in the rarest cases
27 should the trustee be deprived of the privilege of selecting his own counsel ...") (citing and
28 quoting *In re Codesco, Inc.*, 18 B.R. 997, 999 (Bankr. S.D.N.Y. 1982)). The BHLT's professed

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1 concerns to a hypothetical delay and duplication of effort should not be used as de facto
2 disqualification of Mr. Becker as counsel to the Committee.

3 **B. The Substitution Should Not Cause Any Prejudicial Delay.**

4 The BHLT's complaints of potential delay are unwarranted. Sonnenschein was first
5 notified of the tentative settlement on Thursday, October 18. On Friday, October 19, Mr.
6 Wolfson participated in a brief conference call with the BHLT Trustee and his counsel regarding
7 the tentative settlement.¹ Promptly thereafter, Sonnenschein notified the Class 7 Committee
8 about the tentative settlement.

9 It quickly became clear that a disagreement existed between certain members of the
10 Committee and Sonnenschein regarding the appropriate strategy to take in this matter, which
11 resulted in a concomitant breakdown in the attorney client relationship. On October 25, the
12 Committee notified Sonnenschein that it had determined to engage new counsel. Sonnenschein
13 notified the BHLT's counsel immediately and filed the Consent Order for Substitution the very
14 next day. In other words, Sonnenschein filed the substitution only eight days after it was notified
15 of the tentative settlement, and before the BHLT filed its 9019 motion seeking approval of the
16 settlement.

17 **C. The Potential For A Slight Duplication Of Effort Should Not Prevent The
18 Committee From Retaining Counsel Of Its Choice.**

19 The BHLT has professed concern about duplication of effort. This too is unwarranted.
20 For almost the last two years, from January 2006 to September 2007 (essentially the time since
21 the AT&T settlement was approved to the time Sonnenschein was notified of the Cox/Comcast
22 settlement), Sonnenschein billed less than 40 hours to this matter, approximately 2 hours per
23 month. In this limited time, Sonnenschein conducted no meaningful review or analysis of the

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25 ¹ In its response to Mr. Becker's application, the BHLT states that the Class 7 Committee
26 promised not to oppose the settlement if the BHLT agreed to share a portion of the settlement
27 proceeds with former equity holders. Perhaps there was a misunderstanding, but this is not an
28 accurate characterization of the conversation between Mr. Wolfson and Mr. Williamson (the
BHLT Trustee). Mr. Wolfson attempted to convey the message that if equity received nothing as a
result of the settlement he did not see how the Committee could not object. Mr. Wolfson made it
clear that he had not yet spoken to the Committee and that he was merely soliciting a settlement
offer from the BHLT to provide the Class 7 Committee with an alternative to further litigation.

1 Cox/Comcast litigation. As this Court is aware, Sonnenschein's request to participate in the
2 Cox/Comcast litigation on behalf of the Class 7 Committee was denied. Instead, Sonnenschein's
3 role was essentially limited to monitoring the situation and communications with the BHLT's
4 counsel and the Class 7 Committee regarding the procedural status of the litigation.

5 As discussed above, Sonnenschein was only notified of the tentative settlement slightly
6 more than two weeks ago. Moreover, with the exception of the publicly filed pleadings, a few
7 conference calls with counsel to the Trustee, and, more recently, some pretrial briefing,
8 Sonnenschein did not receive any substantive information about the litigation until October 22 --
9 only three days before Sonnenschein notified the BHLT of the proposed substitution -- when it
10 was furnished with three boxes including copies of the pre-trial briefs with their exhibits,
11 proposed trial exhibits, and expert reports. Moreover, with the BHLT's knowledge and
12 approval, Sonnenschein stopped working on this matter shortly after filing the substitution form
13 to avoid any duplication of effort with the Becker Law Office, and, except for a few hours of the
14 most cursory review, did not even begin to review the trial exhibits or expert reports.

15 Given the limited amount of work conducted by Sonnenschein in connection with the
16 Cox/Comcast case, there could be very little duplication of effort. While Sonnenschein may
17 have some useful background on the case from the confirmation hearing and the AT&T
18 settlement hearing, it is merely background. Moreover, the confirmation hearing took place five
19 years ago, and the AT&T settlement hearing over two years ago. These are hardly matters fresh
20 in the minds of counsel such that Sonnenschein would have no need to re-familiarize itself with
21 the record. In any event, whether this settlement makes sense depends upon the strengths or
22 weakness of the Trustee's case here, which Sonnenschein and has not yet analyzed.

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III. CONCLUSION

For the foregoing reasons, Sonnenschein respectfully requests that the Court approve the proposed substitution of attorney for the Class 7 Committee.

Sonnenschein Nath & Rosenthal LLP

Date: November 6, 2007

By *s/Christopher E. Prince*
Christopher E. Prince